In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

No. 79-411

O. P. MURPHY PRODUCE CO., INC.
dba O. P. MURPHY & SONS,
a TEXAS CORPORATION,
Petitioner,

vs.

THE AGRICULTURAL LABOR RELATIONS BOARD
OF THE STATE OF CALIFORNIA,
Respondent,
and
UNITED FARM WORKERS OF AMERICA,
AFL-CIO, Real Party in Interest.

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeal of the State of California
First Appellate District—Division Four

CARL T. CURTIS
1101 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Petitioner

CHARLEY M. STOLL
P. O. Box 2130
Newport Beach, California 92663
(714) 833-8384
Of Counsel

BOWNE-PERNAU WALSH • 1045 SANSOME ST. • S.F., CA 94111 • (415) 981-7882

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Cases

TABLE OF AUTHORITIES CITED

Constitution

Statutes

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

No.

O. P. MURPHY PRODUCE CO., INC.
dba O. P. MURPHY & SONS,
a TEXAS CORPORATION,
Petitioner,

vs.

THE AGRICULTURAL LABOR RELATIONS BOARD
OF THE STATE OF CALIFORNIA,
Respondent,
and
UNITED FARM WORKERS OF AMERICA,
AFL-CIO, Real Party in Interest.

PETITION FOR A WRIT OF CERTIORARI

To the Court of Appeal of the State of California
First Appellate District—Division Four

The petitioner O. P. Murphy Produce Co., dba O. P. Murphy & Sons, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of the State of California, First Appellate District entered in this proceeding on April 19, 1979.

OPINION BELOW

The Order of the Agricultural Labor Relations Board, the Court of Appeals of California, First District and the Supreme Court of California appear in the Appendix hereto.

JURISDICTION

The Order of the Court of Appeal of California, First Appellate District, was entered on April 19, 1979. Thereafter, on June 14, 1979, the Supreme Court of California denied a petition for hearing. The jurisdiction of the Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether the ALRB's decision was so devoid of evidentiary support as to render it unconstitutional under the Due Process Clause of the Fourteenth Amendment.

2. Whether the denial of review by the California Court of Appeals, based on an inapplicable statute and case law, was arbitrary and capricious, an abuse of discretion and a denial of Due Process under the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 14.

Set forth in full in Appendix.

STATEMENT OF THE CASE

O. P. Murphy Produce Co., Inc., is a Texas corporation doing business in Monterey County, California, as O. P. Murphy & Sons (hereinafter "O. P. Murphy"). It harvests and packs fresh tomatoes in Soledad, California, and has been doing so for approximately twenty-five years.

On September 30, 1975, an election was held at O. P. Murphy, pursuant to the Agricultural Labor Relations Act of 1975 (California Labor Code Sections 1140 et seq., hereinafter "the Act"), following the filing of an election petition by the United Farm Workers of America, AFL-CIO (hereinafter "UFW"). As a result of a union victory in that election, the UFW was certified on March 17, 1977, by the Agricultural Labor Relations Board (hereinafter "ALRB" or "Board") as the bargaining representative of all agricultural employees of O. P. Murphy in Monterey County.

During August, 1977, the UFW and the Petitioner engaged in contract negotiations. The UFW's practice is to set up a negotiating committee consisting of employee representatives. In furtherance of that policy, Ms. Manney went repeatedly to O. P. Murphy's fields to set up the committee, and once formed, to keep that committee informed of the negotiations.

The Board established a presumption that an effective alternative means of communicating with agricultural employees does not exist.

At various occasions in August, Ms. Manney was directed to leave and not return while the employees were working by supervisors of O. P. Murphy and on one occasion by the Sheriff's Department.

The ALRB charged O. P. Murphy with an unfair labor practice. In the Board's final order it formulated a presumption that there were no alternative means of communication with agricultural employees, other than post certification access. The Board set up guidelines by which

it would evaluate each case. The ALRB's final order disagreed with the Administrative Law Officer's finding that alternative channels of communication existed and found post certification access was necessary.

The ALRB took exception to O. P. Murphy's response to Ms. Manney's presence on its private property:

> ". . . we find that Respondent's [O. P. Murphy's] admitted photographic surveillance of Ms. Manney, and its attempts to have her arrested were excessive and unreasonable reactions to her presence at the worksite and constituted unlawful interference with employees' Section 1152 rights and a violation of Section 1153(a) of the Act." *O. P. Murphy,* 4 ALRB 106, at page 11.

It is this finding, as well as the Board's conclusion, that Ms. Manney was lawfully present on O. P. Murphy's property, that formed the basis of the Petition for Review. The federal issue of denial of due process of law was raised in that petition.

The Court of Appeal, First Appellate District denied Petitioner's Petition for Review pursuant to California Labor Code Section 1160.8. This denial was based on the following reasoning:

> "No sanction based on the Agricultural Labor Relations Board's finding was issued against petitioner. The Board's holding only requires compliance with the law on post-certification access, in accordance with 8 Cal. Admin. Code sec. 20900 (e)(1)(C) and *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal. 3d 392, 414, 417.

The Supreme Court of the State of California denied a petition for hearing on June 14, 1979.

REASONS FOR GRANTING THE WRIT

I

THE BOARD'S DECISION IS NOT SUPPORTED BY ANY EVIDENCE AND IS IN CONFLICT WITH NATIONAL LABOR RELATIONS BOARD PRECEDENT

In its decision the Agricultural Labor Relations Board purports to set up the following guidelines for post-certification access:

> "We also believe the following guidelines to be appropriate. The purpose for taking access must be related to the collective bargaining process. Absent unusual circumstances, the labor organization must give notice to the employer and seek his or her agreement before entering the employer's premises. The labor organization must give such information as the number and names of the representatives who wish to take access, and the times and locations of such desired access. The parties must act in good faith to reach agreement about post-certification access.[2] The right of access does not include conduct disruptive of the employer's property or agricultural operations." 4 ALRB 106, at pp. 9-10.

Labor Code Section 1148 specifically requires that the ALRB follow applicable precedents of the National Labor Relations Act (29 USC § 151 *et seq.*) ("NLRA"). The ALRB has not shown, nor can it prove, that NLRA precedent is not applicable in a post-certification access situation. Certainly, the NLRB has had a great deal of experience with such seasonal industries as food processing, stevedoring, construction and lumber milling. [See *Grower-Shipper Vegetable Association,* 230 NLRB No. 150, 96 LRRM 1054 (1977).] Any claim by the ALRB that the

NLRA precedent is inapplicable simply ignores the NLRB's vast experience in both rural areas and seasonal industries.

The NLRA precedent is very clear in this case and was plainly stated in *Labor Board v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956).

> "Organization rights are granted to workers by the same authority, the National Government, that preserved property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other. The employer may not affirmatively interfere with organization; the Union may not always insist that the employer aid organization. But when the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels, the right to exclude from from property has been required to yield to the extent needed to permit communication of information on the right to organize." 351 U.S. at 112.

In *Central Hardware Co. v. NLRB*, 407 U.S. 539, 80 LRRM at 769 (1972) the Supreme Court elaborated on *Babcock & Wilcox:*

> "The principle of Babcock is limited to this accommodation between organization rights and property rights. This principle requires a 'yielding' of property rights only in the context of an organization campaign. Moreover, the allowed intrusion on property rights is limited to that necessary to facilitate the exercise of employees' §7 rights. After the requisite need for access to the employer's property has been shown, the access is limited to (i) union organizers; (ii) prescribed nonworking areas of the employer's premises;

> and (iii) the duration of organization activity. In short, the principle of accommodation announced in Babcock is limited to labor organization campaigns, and the 'yielding' of property rights it may require is both temporary and minimal."

The key issue, therefore, is whether the inaccessibility of employees makes ineffective the reasonable attempts by non-employees to communicate with them through the usual channels. *Labor Board v. Babcock & Wilcox Co.*, supra. As a result, "one of the crucial questions in access cases is whether a union, before insisting that an employer 'aid organization', has itself made 'reasonable' attempts to communicate with the employees it seeks to organize." *NLRB v. New Pines, Inc.*, 468 F.2d 427 (2nd Cir. 1972), 81 LRRM 2423. Thus, the real issue is the following:

> "The sole issue raised is whether the Union has made an adequate showing that there are no reasonable alternative means of generating face to face contact with the workers without having access to the employer's property." *NLRB v. Tamiment, Inc.*, 451 F.2d 794 (3rd Cir. 1971), 78 LRRM 2727.

The burden to show no alternative means of communication is on the union, not on the employer. *Monogram Models, Inc.*, 192 NLRB No. 99, 77 LRRM 1913 (1971); *Falk Corp.*, 192 NLRB No. 100, 77 LRRM 1917 (1971); *NLRB v. Metlox Mfg. Co.*, 83 LRRM 2341 (9th Cir. 1972) 83 LRRM 2331; *S. E. Nichols*, 200 NLRB No. 161, 82 LRRM 1134 (1972).

The Board, however, ignored all of this precedent and proceeded on a path of its own premised on the unsup-

ported theory that the precedents were not applicable since agriculture is different. As stated above, the NLRA covers all forms of business and employers, including rural and seasonal ones. Even the Babcock & Wilcox Co. is not so very different from the instant case or other ALRB factual situations.

The employees were in a large isolated area near a small town beyond reasonable contact at public areas adjacent to the company. In spite of this, the United States Supreme Court concluded that the employer was not required to permit union employees to use its facilities when other means were available:

> "Here the Board failed to make distinction between rules of law applicable to non-employees.
>
> The distinction is one of substance. No restriction may be placed on the employees' right to discuss self-organization among themselves, unless the employer can demonstrate that a restriction is necessary to maintain production or discipline. *Republic Aviation Corp. v. Labor Board*, 324 U.S. 793, 803. But no such obligation is owed nonemployee organizers. Their access to company property is governed by a different consideration. The right of self-organization depends in some measure on the ability of employees to learn the advantages of self-organization from others. Consequently, if the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property. No such conditions are shown in these records.
>
> The plants are close to small well-settled communities where a large percentage of the employees live. The usual methods of imparting information are available. See, e.g., note 1, supra. The various instruments of publicity are at hand. Though the quarters of the employees are scattered they are in reasonable reach. The Act requires only that the employer refrain from interference, discrimination, restraint or coercion in the employees' exercise of their own rights. It does not require that the employer permit the use of its facilities for organization when other means are readily available."

In determining whether or not the Unions have carried their burden, the National Labor Relations Board and the Courts have placed a heavy burden on unions. The following cases are illustrative:

(1) *NLRB v. Tamiment*, Inc., 451 F.2d 794 (3rd Cir. 1971). Certainly, the situation at *Taminent, Inc.* illustrates the similarity between NLRA precedent and the agricultural setting.

All of the elements that the ALRB found to be unique to agriculture can be found in this case. The Court focused on the union's failure to make *reasonable attempts* to communicate with workers at places other than on the employer's private property. The Third Circuit noted that the union *failed* to (1) attempt diligently to reach workers when they were off company property, (2) make any effort to obtain a list of employees from Taminent so that the union could send mail direct to them, (3) request the right to post notices on company property, and (4) arrange for any meeting for employees.

(2) *NLRB v. New Pines, Inc.*, 468 F.2d 427 (2nd Cir. 1972). The Circuit Court placed great emphasis on the

"union's lackadaisical organizing effort" and noted that union simply failed to take advantage of the avenues of communication open to it.

(3) *Dexter Thread Mills*, 199 NLRB No. 113, 81 LRRM 1293 (1972). In this case the NLRB found that the union had a relatively safe and easy alternative means of obtaining employee names and addresses. The NLRB found that the organizers could have stood on a public easement between a parking lot and a highway and copied license numbers of employees' cars as they arrived at work. By this means, as well as by greater utilization of sympathetic employees, the union could have made direct home contacts.

(4) *Rochester General Hospital*, 234 NLRB No. 44, 97 LRRM 1410 (1978). The union failed to carry its burden in this case since: (1) the union made no effort to organize employees through other fellow workers; (2) the union made no reasonable efforts to leaflet employees at several nearby bus stops or at several intersections where employee cars go by as they leave work; and (3) the union failed to attempt communication through the print and broadcast media, bus placards, bumper stickers and displays of union signs at the public road at the main entrance to the hospital.

(5) *Monogram Models, Inc.*, 192 NLRB No. 99, 77 LRRM 1913 (1971). This case is particularly interesting in that the union attempted to establish that the conventional methods of communication were not available or feasible, because the employees involved lived in a large metropolitan area as opposed to a small rural area, as found

in *Babcock & Wilcox Co.* In rejecting this generalization, the Board stated:

> "a free and reasoned choice in an election, and that by giving the union the same opportunity the employer has through his possession of names and addresses of informing the electorate of his view, the union would also be certain of reaching all employees with its arguments, thereby resulting in an informed electorate.
>
> Although the Board did not limit the Union to the use of the mails, it was clear from the decision that the Board considers a mailing list as an effective communication tool and for that matter so does the Union in this case, because Shephert so testified."

Evidence in this case overwhelmingly establishes the UFW had alternative channels of communication available to reach O. P. Murphy's employees.

Ms. Manney stated her purpose for trespassing on O. P. Murphy's property was to set up committees in the crews for the purpose of negotiations and to communicate with those committees. She did not intend to try to speak with all of the employees.[1]

The only question is whether Linda Manney had effective channels of communication, other than direct contact at O. P. Murphy's fields, that would enable her to set up employee negotiating committees and thereafter to keep

---

[1](Transcript Record for Friday, November 18, 1977, Vol. XXII, for ALRB Case Nos. 77-CE-31-M, et. al., at p. 3, 122, 32-33, 36-37, 124-125. Hereinafter all citations to the transcript will be of Linda Manning's testimony on November 18, 1977 in Case No. 77-CE-31-M, et. al. and will be designated as "T/R" with the page number following, unless otherwise specified.)

those committees advised of progress and developments in the negotiations so that those employee committee members could communicate that information to O. P. Murphy's employees. Considering the Board's negative answer to that question, it is incredible the number of channels open to Ms. Manney:

1. Pre-Season Opportunities

In June, 1977, O. P. Murphy, the UFW and employees of O. P. Murphy conducted preliminary contract negotiations. (ALO Opinion, 4 ALRB 106, slip. page 17). Prior to that meeting, O. P. Murphy had submitted a list of names of 497 employees together with their addresses. (General Counsel's Exhibit 6-E in 77-CE-31-M, et al.). In spite of this fact, prior to contacting employees in the field on August 4, 1977, Ms. Manney failed to make use of either of these lists. (T/R 70-73). Certainly, some of these employees could have been reached by telephone, home visits, or mail.

2. Posting of Notices

The UFW failed to take advantage of one of the most effective channels of communication open to it. If the union had so desired it easily could have gathered a large crowd to any meeting that it wished by using the same techniques as employed by Petitioner:

> "In 1977, notification of available jobs for the tomato harvest season was performed in the identical manner as was utilized by the Company in 1976, i.e., through posters, signs and word of mouth.
>
> Before the start of the August 4, 1977 harvest season, the Company posted a public notice to inform individuals that it would be accepting employment applications on July 21, 22, 1977. This notice was posted for the general public.
>
> A total of 375 applications were received by the Company by July 31, 1977." (ALO Opinion, 4 ALRB 106, slip at pages 3-4).

Obviously, this method of communication was a very effective alternative means of communication.

3. Leafletting and Contact on Public Property Near Petitioner's Property

Although it has been repeatedly argued that pamphleting or personal contact on public property adjacent to an employer's premises is not a reasonable alternative channel of communication, the facts of this case establish otherwise.

On August 6, 1977, Ms. Manney decided to actually attempt an alternative means of contact. She and another organizer went to the Hopson Avenue field and parked their car on the public road. There they waited for workers to finish work and come out of the field. As the employees drove by in their cars, Ms. Manney and the other organizer "waved them down and talked to them as they were leaving." (T/R 22-29).

In fact, at least five (5) workers stopped to talk, and the only reason why more did not was because the UFW failed to send out two more organizers to cover the second exit from the field. (T/R 22-29).

Thus, Ms. Manney managed to attract at least five (5) workers without any more than a wave of the arm. She

did not even have a sign explaining who they were. Nor did she even attempt to pass out any leaflets to explain her mission or to announce a meeting. (T/R 81).

4. Election Campaign Information

Although the election was held in 1975, and Ms. Manney's activities did not take place until 1977, it is not unreasonable to assume that the UFW could have made the same use of the pre-petition list and the eligibility list of O. P. Murphy employees supplied to the Union pursuant to 8 California Administrative Regulations Sections 20910 and 20310. However, it is apparent that the Union failed to do so, even though O. P. Murphy employs the same employees every year. (ALO Opinion, 4 ALRB No. 106, slip at page 14).

In addition, it would seem reasonable to assume that the Union would have made ample contacts with O. P. Murphy's employees when it took lawful access to the employer's premises both before and after the election pursuant to 8 California Administrative Code Sections 20900(e), 20900(e)(1)(c), and 20910. These contacts could have led to further communication.

5. Labor Camps

The Union failed to make use of another simple and extraordinary means of communication with O. P. Murphy's employees. Many of the workers lived in two (2) labor camps in Soledad. (T/R 108-109, 112-113; ALO Opinion, 4 ALRB 106, slip at page 7). Not only did these camps have telephones, but they were an ideal location for personal contact. All of the employees are gathered together in one central location away from the eye of the Petitioner's

supervisors. In fact, in 1975, one of O. P. Murphy's employees sponsored the showing of a UFW film at the back of their trailer in Tony Guzman's labor camp. (ALO Opinion, 4 ALRB 106, slip at page 6).

6. Available Channels of Communication Consciously Ignored

Linda Manney consciously decided to ignore available channels of communication. The prime example of this is found in her activities on August 16, 1977. Regarding that day, Ms. Manney testified her purpose for going that day was

> "To speak to the negotiating committee. One really important thing that I wanted to do was check out one of the negotiating committee members who I heard had been in a car wreck. I wanted to find out if the work had been done in his crew and also how he was." (T/R 44)

However, her testimony also establishes that it was not necessary for her to go to the field to find out what the condition of the committee member was; and in fact, she finally was forced to use the alternative method of communication:

> "Now, you testified that on the 16th that one of the reasons you went to the field was to find out the condition of Alberto Savala, is that correct?
>
> A. Yes.
>
> Q. Did you go to his house?
>
> A. That day?
>
> Q. Yes.
>
> A. I went to his house. I don't remember if it was that day, but I did go to his house.
>
> Q. Was that before or after you went to the field?

A. It was after, because I didn't find him in the field.

Q. Okay.
You expected to find him in the field?

A. Yes. I didn't know how serious the accident was.

Q. Okay.
Does he have a phone?

A. They have a phone with their cousin or somebody. There's a couple different families that use that telephone number.

Q. Did you attempt to call him before you went to the field?

A. No, because I heard about it that morning at another company." (T/R 116-117).

This was not the only example of Ms. Manney's failure to use the information available to her prior to resorting to direct contact on Petitioner's private property. Ms. Manney testified that on August 10, 1977 all of the negotiating committee members were elected. (T/R 62, 122). Therefore, after that time, the only reason that Linda Manney went to the Petitioner's property was to talk directly to those committee members not to the employees of O. P. Murphy, as such. (T/R 124-125). The question then, is whether Linda Manney had alternative means of contacting those committee members. The answer might well have been written in blinking lights, it is so clear.

She testified there were ten to fifteen (10-15) members on the committee. Although most (⅔) of them had telephones, she normally tried to speak with them in the fields. Only if she couldn't speak with them in the fields would she telephone them prior to meetings. Sometimes if she

couldn't speak with them in the fields, she went to their homes in the evening. (T/R 102).

Even when Ms. Manney had meetings with committee members and informed them of important matters, she felt compelled to re-state that information at the Petitioner's property. On August 19, 1977, Ms. Manney went to O. P. Murphy's private property during working hours.

> "A. to make sure that all the negotiating committee came into the Salinas office for the meeting we were going to have with them and then afterwards there was a negotiations meeting with the company and I wanted to make sure they all got there, that they didn't forget or they all had rides or didn't have problems with the foremen." (T/R 50).

Ms. Manney obviously did not think much of the members of the negotiating committee, since she had just had a meeting with all of them the night before. (T/R 83-84). Surely the employees could have remembered the meeting date for one day, and if they need a ride, they could have informed her on the night of the 18th.

The simple fact is that the Union had ample and effective means of communicating with committee members outside the worksite. Prior to August 19, 1977, the employee members met four times. Ms. Manney had both their telephone numbers and addresses. (T/R 82). All of the members attended the meetings (T/R 43). There was no reason for Ms. Manney to intrude on O. P. Murphy's property. The committee members were perfectly capable of meeting with Ms. Manney at places other than work. They were perfectly capable of performing their duties without Ms. Manney sitting on their shoulders, and she certainly could have

obtained any information or status report that she was seeking from them at someplace other than the middle of the fields.

If Ms. Manney felt herself incapable of discussing matters with the committee at their meetings or of contacting workers by herself, then she certainly could have elicited help from the Union. Even this, though, she failed to do. (T/R 121, 131).

7. Feasability of Meetings

Assuming that Linda Manney had taken the time and the initiative to contact employees and to inform them of the dates and times of meetings, would the workers have been able to attend? Certainly. The 10 to 15 committee members, as well as employees in general managed to attend four meetings in Soledad where most of them lived. (T/R 108). The purpose of the meetings was

> "A. . . . to educate workers about master contract languages, benefits, the different clauses and articles in the contract.? (T/R 41-42)
>
> A. All of the negotiating committee were always there and a lot of times other workers that were just interested would come along too. A lot of people brought their wives.
>
> Q. Do you remember approximately what time of day those meetings were held in Soledad?
>
> A. They were in the evenings, 6:00 or 7:00." (T/R 43)

If the UFW had chosen to do so, these meetings could have been held on August 4, right after work. The few workers that did not live in Soledad could have attended.

8. Telephone Communication

Ms. Manney testified that the labor camp had telephones. (T/R 112) The Petitioner on August 8, managed to telephone approximately 80 people. On one occasion on that day, one telephone call reached fifteen people. (ALO Opinion, 4 ALRB 106, slip at P. 5-6). The UFW could have, at least, attempted to telephone employees. It had lists of names. It knew the names of the labor camps. It knew that the O. P. Murphy employees generally worked in family groups. (ALO Opinion, 4 ALRB 106, slip at P. 6) The Union simply did not try.

If the findings of the ALRB are allowed to stand in this case, this Court will be issuing a license to every union agent to abuse the delicate balance between an employer's property rights and an employee's right to self-organization. The ALRB could not have selected a worse case to express its opinion on post-certification access. Linda Manney went out of her way to abuse any right that she may have had to access. She disturbed employees during their working time, destroyed O. P. Murphy's crops, and failed to notify the Petitioner prior to her arrivals. The ALRB simply ignored these facts.

Ms. Manney's first visit on *August 4, 1977* was indicative of her subsequent intrusions. Rather than going to the field during non-working hours (prior to work, lunch-time, or after work), she chose the hour of 2:00 P.M. while the workers were picking tomatoes. She parked her car on one of the dirt roads adjacent to the fields, although she could have parked her car where the workers left their automobiles. As a result, she blocked the movement of a tomato

truck and forced the driver of the truck as well as supervisors at the field to take time away from work to allow her to move her car. (T/R 7-19, 93, 102).

From the car, Ms. Manney proceeded to walk directly across the fields of tomato plants. She does not remember if she walked on the tomato plants, although it is impossible to conceive of how she could have missed them, since the rows are two feet across, the plants two feet high, and she cut diagonally *across* the rows. She did not even bother to walk down the rows in a parallel fashion. (T/R 84-85).

When asked why she walked across the field on August 16, 1977, she replied:

> "A. Because I wanted to get to workers who were in the field and to walk along the access roads meant I had to walk to halves, half of a square, whereas if I cut through the field, I could get to the workers quicker." (T/R 65-66).

In other words, rather than arrive a little earlier or take a little longer, Ms. Manney chose to take the chance of breaking or destroying valuable tomato plants. Such conduct is simply outrageous and unnecessary.

On *August 5, 1977,* Ms. Manney again entered the fields during work time. (T/R 20).

On Saturday, *August 6, 1977,* the Union organizer managed to show a little respect for O. P. Murphy's property rights and conducted her business at the entrances to the Petitioner's property. All without O. P. Murphy's interference. (T/R 22-26).

The following Monday, *August 8, 1977* (erroneously specified as August 9 in the testimony), Ms. Manney again

chose to walk diagonally across the fields, rather than around them. She did wait until lunch time to talk to the workers, and again she had no trouble from the Petitioner. (T/R 30-34, 84-85).

On *August 9, 1977,* the Union organizer waited until after work hours. She again had no trouble with Petitioner's supervisors. (T/R 35-36). The same thing happened on *August 10 and 11, 1977.*

However, by *August 16, 1977,* Ms. Manney was back to her old ways, even though she apparently met with success when she confined her visits to non-work hours. She again cut directly across the fields, and as a result, was confronted with an irate supervisor. The ALO described the supervisor's response to Ms. Manney's actions as follows:

> "I am convinced that Mr. Duncan just wanted her to stop stepping on the tomato plants." (ALO Opinion, 4 ALRB 106, slip at P. 30) (T/R 44-46, 65-66).

On *August 19, 1977,* Ms. Manney again returned in the morning during the tomato picking. A sheriff at the premises told her "to leave and not come back during working hours." (T/R 52).

In summary, Ms. Manney went out of her way to violate O. P. Murphy's rights, without any appreciable benefit to the employees at O. P. Murphy. She even failed to comply with the guidelines already established for pre-election access. [8 Cal. Admin. Code Section 20900]. Access under the Board's own regulations is available to any labor organization for four (4) thirty (30) day periods in any calendar year. Organizers may enter the employer's property one (1) hour before and after work and during the lunch. Al-

though Linda Manney was fully aware of these access provisions, she ignored them. (T/R 57).

The Board in its decision also stated specified guidelines to be followed in the case of post-certification access. The ALRB ignored the fact that Ms. Manney failed to comply with even these minimal standards.

Applying this standard to the instant facts, establishes that Ms. Manney was not lawfully on O. P. Murphy's property. She never once gave any notice of her intention to take access, and the UFW notified the Petitioner on only one occasion of Ms. Manney's intended visit. (T/R 52, 59, 98). Certainly, Ms. Manney never attempted to reach an agreement on access and her conduct can only be described as disruptive.

The refusal of the Board to respect the evidence on record and the facts and findings of the Administrative Law Officer in reviewing the record and making its own findings cannot be justified. Moreover, the Board's setting up its own guidelines, rather than following NLRB precedent, and then ignoring both renders its action unconstitutional under the Due Process Clause of the Fourteenth Amendment. Thus, the granting of certiorari to review the decision below is justified.

II

THE COURT OF APPEAL DECISION, BASED ON INAPPLICABLE LAW, RESULTS IN A SERIOUS MISCARRIAGE OF JUSTICE AND A DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT

The Court of Appeal based its decision denying Petitioner's Writ of Review on 8 California Administrative Code Section 20900(e)(1)(C) and *Agricultural Labor Relations Board v. Superior Court*, supra. The Court of Appeal noted that the ALRB's decision in this case merely required "compliance with the law on post-certification access". However, both the Administrative Code Section quoted and the California Supreme Court case cited dealt solely with *pre*-certification access by union *organizers*, not with *post*-certification access by bargaining representatives.

In fact, 8 California Administrative Code Section 20900 (e)(1)(C) specifically states that access under its provisions does not relate to *post*-certification situations.

> (C) *Access under this Section shall not be available to any labor organization after the 5th day following completion of the ballot count* pursuant to Section 20360(a) in an election conducted under Chapter 5 of the Act, *except that where objections to the election* are filed pursuant to Labor Code Section 1156.3(c), *the right of access shall continue for 10 days following service of such objections.* Access under this section recommences 30 days prior to the expiration of the bars to the direction of an election set forth in Labor Code Sections 1156.5, 1156.6 and 1156.7(b). Nothing herein shall be interpreted or applied to restrict or diminish whatever rights of access may accrue to a labor organization certified as a bargaining representative. (Emphasis added.)

It is clear from the hearings conducted to gather evidence on the question of *pre*-certification access for *organizers* that the ALRB had no intention of including a post-certification situation in its regulation.

On August 29, 1975, the author of the version of the pre-certification access regulation finally adopted by the ALRB as 8 California Administrative Code Section 20900 stated:

> "Now, I recognize that it will be necessary to determine some point which access rights would again accrue. Because, say, that they cease for an eternity would not be appropriate. We do not yet have rules nor do we have published decisions which clarify the statute with respect to the filing of petitions, rather current contract in effect. And pending the adoption of such rules or principles by decision would be inappropriate to specify when access, under this rule, could commence again. But for purposes of the limited period of time, which I have in mind for the experimental nature of this rule, that is not the problem.
>
> I don't mean, of course, that access under this rule is the only access which employees might have after an election is held. Of course, if a union negotiates an agreement which provides it access for the purpose of handling grievances under that agreement, it will have such access as the contract provides." (Statements by Board Member Grodin, August 29, 1975, Transcript Record Pages E-27 to E-28)

In fact, it is apparent from the final sentence of 8 California Code Section 20900(e)(1)(C) that the ALRB intended to leave the post-certification access situation to precedent under the National Labor Relations Act. Thus, the law on post-certification access referred to by the Court of Appeal is revealed in the precedent under the NLRA.

Even the case relied on by the Court of Appeal states the Board's decision is in conflict with federal precedent.

> ". . . the federal law incorporated in the act by the Legislature denies access to non employee organizers whenever reasonable alternative means of communication are available. Further, even when access is allowed, it is restricted to non-working areas. By permitting blanket access to all agricultural property, regardless of the existence of alternative means of communication, and by permitting access to working areas, the board's regulation is contrary to *Babcock* and *Central Hardware*, violating the statutory command to follow federal precedent." *ALRB v. Superior Court*, 16 Cal.3d 392, 424, 128 Cal.Rptr. 183, 546 P.2d 687 (1976)

Finally, the correctness of the Court of Appeal decision is in serious question. By its denial of review the Court lets stand an ALRB order which not only is unsupported by the evidence but also fails to follow NLRB precedent. Furthermore, the Court's decision is based on a clearly incorrect application of law. The totality of the circumstances has resulted in a serious miscarriage of justice which is violative of the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Court of Appeal of California, First District.

Respectfully submitted,

CARL T. CURTIS
Counsel for Petitioner

September 5, 1979

Appendices

APPENDIX A

State of California
Agricultural Labor Relations Board
Soledad, California

O. P. Murphy Produce Co., Inc., dba O. P. Murphy & Sons, Respondent, and United Farm Workers of America, AFL-CIO, Charging Party.	Case Nos. 77-CE-34-M 77-CE-36-M 77-CE-37-M 4 ALRB No. 106

DECISION AND ORDER

On April 17, 1978, Administrative Law Officer (ALO) Thomas Patrick Burns issued the attached Decision in this proceeding. Thereafter, Respondent, the Charging Party and the General Counsel each filed exceptions and supporting briefs, and the General Counsel filed a brief in reply to Respondent's exceptions.

The Board has considered the record and the ALO's Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings and conclusions of the ALO, and to adopt his recommended Order to the extent consistent herewith.[1]

---

[1]The ALO's proposed remedial Order lists one Martin Hernandez among the discriminatees to be offered reinstatement with back pay. As no evidence was presented at the hearing with regard to this individual, and as the ALO has reported that he was included by mistake, his name has been deleted from the list of discriminatees contained in the Order.

The General Counsel and the Charging Party have filed exceptions to the ALO's findings and conclusions concerning events which occurred during UFW organizer Linda Manney's visit to Respondent's property, after the UFW and Respondent had commenced contract negotiations. Ms. Manney had entered Respondent's premises to tell employees about the negotiations and of the need to form a negotiating committee of employee representatives. The ALO found that Ms. Manney had no legal right to be on Respondent's property, that she was a trespasser, and therefore concluded that Respondent did not violate the Act by the conduct of its agents in attempting to place her under arrest and repeatedly photographing her, often as she talked with employees.

We decline to adopt the ALO's finding that a certified collective bargaining representative does not have a legal right to enter an employer's premises during the course of collective bargaining negotiations for purposes related to the union's collective bargaining obligation.

In this decision we address the issue of post-certification access, but only insofar as it relates to a certified labor organization engaged in, or attempting to engage in, collective bargaining negotiations with an employer. We shall not consider herein what, if any, rights of access accrue to the certified representative after the parties enter into a collective bargaining agreement. Access rights of a certified collective bargaining agent during the term of a collective bargaining agreement, for the purpose of implementing or administering the contract, are usually included in the contract and are best left to the agreement of the parties.

This Board has recognized the right of union representatives to have access to the premises of agricultural employers prior to a representation election. 2 Cal. Admin. Code 20900 and 20901. Limited access is also available for a period of up to 15 days following the counting of ballots. *Ibid.*, 20900(e)(1)(C). Although our regulations contain no specific provisions for post-certification access by the bargaining representative, they acknowledge that post-certification access rights can come into play. Section 20900(e)(1)(C) provides in part: "Nothing herein shall be interpreted or applied to restrict or diminish whatever rights of access may accrue to a labor organization certified as a bargaining representative."

The need for post-certification access to an employer's premises has a different origin than the need for access prior to an election. Non-employee organizers are permitted access before an election is held, "for the purpose of meeting and talking with employees and soliciting their support." Section 20900(e). After certification, the need for access is based upon the right and duty of the exclusive representative to bargain collectively on behalf of all the employees it represents.

As the certified union is the agent and representative of all the employees in the bargaining unit, it is essential that it have access to, and communications with, the unit employees during the course of contract negotiations, in order to determine their wishes with respect to contract terms and proposals, to obtain current information about their working conditions, to form and consult with an employee negotiating committee, and to keep them advised of progress and developments in the negotiations. Reason-

able access and adequate communications between the employees and their bargaining agent is just as essential to meaningful collective bargaining negotiations as is contact and communications between the employer and its attorney, or other bargaining representative.

In its role as collective bargaining representative, the labor organization owes a duty to all the employees in the bargaining unit to represent them fairly. *Wallace Corporation v. NLRB,* 323 U.S. 248, 15 LRRM 697 (1944). This duty, which extends to the negotiation of contracts, cannot be discharged unless the union is able to communicate with the employees it represents. *Prudential Insurance Company of America v. NLRB,* 412 F. 2d 77, 71 LRRM 2254 (2d Cir. 1969), *cert. denied,* 369 U.S. 928, 72 LRRM 2695 (1969). The ability to communicate during negotiations has been held to be "fundamental to the entire expanse of a union's relationship with the employees." *Prudential Insurance Company of America v. NLRB, supra,* at p. 84.

Communication between the union and the employees is also essential to the smooth functioning of the bargaining relationship between the union and the employer. If the union cannot easily contact the employees it represents, delays are likely to result, negotiations may flounder, and tentative agreements between the parties may be rejected by the unit employees. Accordingly, all parties benefit from the institution and maintenance of adequate communications between the bargaining representative and the employees it serves.

Where the union seeks information which is relevant and necessary to enable it to perform its bargaining duties, and which cannot be obtained without access to the

employer's premises, the NLRB has held that the employer must allow that access, unless it imposes an unreasonable burden. *Wilson Athletic Goods Mfg. Co.,* 169 NLRB 621, 67 LRRM 1193 (1968). The NLRB has allowed bargaining representatives to enter plants to perform time-and-motion studies, *Fafnir Bearing Company v. NLRB,* 362 F. 2d 716, 62 LRRM 2415 (2d Cir. 1966); *Wilson Athletic Goods Mfg. Co., supra; General Electric Company v. NLRB,* 414 F. 2d 918, 71 LRRM 2562 (4th Cir. 1969); *Waycross Sportswear, Inc. v. NLRB,* 403 F. 2d 832, 69 LRRM 2718 (5th Cir. 1968); *Winn-Dixie Stores, Inc.,* 224 NLRB 1418, 92 LRRM 1625 (1976); to investigate safety conditions, *NLRB v. Metlox Manufacturing Company,* 83 LRRM 2331 (9th Cir. 1972); *Winn-Dixie Stores, Inc., supra,* and to evaluate jobs, *Triangle Plastics, Inc.,* 191 NLRB 347, 77 LRRM 1558 (1971); *Borg-Warner Controls,* 198 NLRB 726, 80 LRRM 1790 (1972); *Haskell of Pittsburgh, Inc.,* 226 NLRB 161 (1976); *General Electric Company,* 186 NLRB 14, 75 LRRM 1265 (1970); *The Kendall Co.,* 196 NLRB 588, 80 LRRM 1205 (1972); *General Electric Company,* 180 NLRB 27, 72 LRRM 1616 (1966).

The NLRB has also held that an exclusive bargaining representative is entitled to access to the employer's premises where the employees are otherwise generally inaccessible, and no alternative means of communication exist. *NLRB v. Cities Service Oil Co.,* 122 F. 2d 149, 8 LRRM 540 (2d Cir. 1941); *Richfield Oil Corporation v. NLRB,* 143 F. 2d 860, 14 LRRM 834 (9th Cir. 1944); *Mid-America Transportation Co. v. NLRB,* 325 F. 2d 87, 54 LRRM 2698 (7th Cir. 1963); *General Petroleum Corp. of California,* 49 NLRB 606, 12 LRRM 180 (1943).

This Board has recognized that unions which seek to organize agricultural employees before an election generally do not have available channels of effective communication except by access to the work-site. 8 Cal. Admin. Code 20900(e). The absence of alternative means of communication was recognized by the California Supreme Court:

> [M]any farmworkers are migrants; they arrive in town in time for the local harvest, live in motels, labor camps, or with friends or relatives, then move on when the crop is in. Obviously home visits, mailings, or telephone calls are impossible in such circumstances. According to the record, even those farmworkers who are relatively sedentary often live in widely spread settlements, thus making personal contact at home impractical because it is both time-consuming and expensive.
>
> Nor is pamphleting or personal contact on public property adjacent to the employer's premises a reasonable alternative in the present context, on several grounds. To begin with, many ranches have no such public areas at all: the witnesses explained that the cultivated fields begin at the property line, and across that line is either an open highway or the fields of another grower. Secondly, the typical industrial scene of a steady stream of workers walking through the factory gates to and from the company parking lot or nearby public transportation rarely if ever occurs in a rural setting. Instead, the evidence showed that labor contractors frequently transport farmworkers by private bus from the camp to field or from ranch to ranch, driving directly onto the premises before unloading; in such circumstances, pamphleting or personal contact is again impossible. Thirdly, the testimony established that a significant number of farmworkers read and understand only Spanish, Filipino, or other languages from India or the Middle East. It is evident that efforts to communicate with such persons by advertising or broadcasting in the local media are futile. Finally, it was shown that many farmworkers are illiterate, unable to read even in one of the foregoing languages; in such circumstances, of course, printed messages in handbills, mailings, or local newspapers are equally incomprehensible. *Agricultural Labor Relations Board v. Superior Court*, 16 Cal. 3d 392, 414-415, 128 Cal. Rptr. 183, 546 P. 2d 687 (1976) [footnotes omitted].

While the need for effective communication in the post-certification context arises from different considerations than those in the pre-election context, the same absence of effective alternative means of communicating with agricultural employees generally exists. The bargaining representative still faces the migratory pattern, the short seasons, and other hindrances to communication which are peculiar to the agricultural setting. Moreover, the communication afforded through pre-election access does not reduce or eliminate the need for post-certification access. Because of the migratory nature of the farm labor force, a bargaining representative may find that it represents different employees when it is negotiating a collective bargaining agreement than it did at the time of the representation election. Even where the composition of the work force does not change, there is often a lengthy period of litigation or other delay between the election and the certification, which makes it necessary that contact between the union and the employees be re-established.

In adopting our pre-election access regulation, 8 Cal. Admin. Code 20900, this Board determined that the alternative channels of communication which the NLRB and federal courts evaluate in each case are not adequate for pre-election solicitation in the context of agricultural labor. See *Tex-Cal Land Management, Inc.*, 3 ALRB No. 14 (1977). Because of the different interests involved after certification, and because of our limited experience with the effect of post-certification access on the negotiating process, we will evaluate the extent of the need for such access on a case-by-case approach.

While we will look at the facts of each case to determine the extent of the need for post-certification access, we start with the presumption that no alternative channels of effective communication exist. We hold that a certified bargaining representative is entitled to take post-certification access at reasonable times and places for any purpose relevant to its duty to bargain collectively as the exclusive representative of the employees in the unit. Where an employer does not allow the certified bargaining representative reasonable post-certification access to the unit employees at the work-site, henceforth such conduct will be considered as evidence of a refusal to bargain in good faith. Where the bargaining representative wishes to observe employees while they are working, in order to obtain information for job evaluations, to conduct safety investigations, or for similar purposes, we shall follow applicable NLRB precedent.

The extent of access during contract negotiations is a threshold matter and is preliminary to those negotiations. Therefore, although we find that the employer may not

deny post-certification access at reasonable times and places, we are not holding that such access constitutes a mandatory subject of bargaining. If it were a mandatory subject of bargaining, negotiations could falter or come to impasse before the substantive contract issues have been addressed. With respect to such matters the NLRB recently noted in *Bartlett-Collins Company*, 237 NLRB No. 106:

> The question of whether a court reporter should be present during negotiations is a threshold matter, preliminary and subordinate to substantive negotiations such as are encompassed within the phrase of 'wages, hours, and other terms and conditions of employment.' As it is our statutory responsibility to foster and encourage meaningful collective bargaining, we believe that we would be avoiding that responsibility were we to permit a party to stifle negotiations in their inception over such a threshold issue.

Preliminary to bargaining on substantive issues, we shall expect the parties to resolve any problems concerning union access, without delaying the contract negotiations. Where a party's conduct causes delays, as well as where an employer refuses a labor organization reasonable access to the employees it represents, such conduct will be considered as evidence of a refusal to bargain.

We have noted that the right of post-certification access is based upon quite different justifications than pre-election access, and that allegations of denials of reasonable access during contract negotiations will be evaluated on a case-by-case approach. We also believe the following guidelines to be appropriate. The purpose for taking access must be

related to the collective bargaining process. Absent unusual circumstances, the labor organization must give notice to the employer and seek his or her agreement before entering the employer's premises. The labor organization must give such information as the number and names of the representatives who wish to take access, and the times and locations of such desired access. The parties must act in good faith to reach agreement about post-certification access.[2] The right of access does not include conduct disruptive of the employer's property or agricultural operations.

Applying the principles set forth herein to the facts of the instant case, we disagree with the ALO's finding that the UFW had available alternative channels of communication with the employees through other employees who were members of the negotiating committee. The UFW, as exclusive bargaining representative for all the agricultural employees in the bargaining unit, had a duty to represent fairly the interests of all those employees. This duty cannot be discharged fully without access to, and the opportunity to communicate directly with, all the employees.

The ALO made no finding as to whether the UFW notified Respondent before Ms. Manney took access to the work-site, and testimony at the hearing left this factual issue in doubt. It appears, however, and we find, that Respondent and its supervisors knew that Ms. Manney was a UFW representative. If the UFW gave Respondent

[2]It is preferable that in fulfilling their duty to bargain in good faith the parties reach agreement among themselves concerning access. However, in order to negotiate access agreements, the parties may request the aid of the Regional Director and Board Agents.

prior notice of Ms. Manney's intended visit, it appears that such notice was not effectively relayed to the supervisors, who were apparently confused as to whether Respondent's policy permitted access by UFW agents. In any event, in view of all the circumstances, we find that Respondent's admitted photographic surveillance of Ms. Manney, and its attempts to have her arrested, were excessive and unreasonable reactions to her presence at the work-site and constituted unlawful interference with employees' Section 1152 rights and a violation of Section 1153(a) of the Act.

As the principles concerning post-certification access set forth in this Decision were not known to Respondent or its agents at times material to the incidents herein, we make no finding as to a refusal to bargain and our remedial Order will include no provision with respect thereto.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, O. P. Murphy Produce Co., Inc., dba O. P. Murphy & Sons, its officers, agents, and successors and assigns shall:

1. Cease and desist from:

a. Photographing or attempting to cause the arrest of any UFW representative for peacefully contacting or communicating with employees on its premises.

b. In any other manner interfering with, restraining and coercing employees in the exercise of their right to self-organization, to form, join or assist labor organiza-

tions, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

c. Discouraging membership of any of its employees in the UFW, or any labor organization, by unlawfully refusing to rehire or in any other manner discriminating against individuals in regard to their hire or tenure of employment, in violation of Labor Code Section 1153(c).

d. Refusing to rehire or otherwise discriminating against its agricultural employees because they have filed charges or given testimony, in violation of Labor Code Section 1153(d).

2. Take the following affirmative action:

a. Offer to the following employees immediate and full reinstatement to their former or equivalent jobs, without prejudice to their seniority or other rights and privileges: Yolanda Guzman, Josefina Lopez Guzman, Socorro Aguilar, Guadalupe Guzman, Rafael Guzman, Josefina Gomez Guzman, Jose Luis Gomez, Concepcion Gomez, Manuel Sanchez, Maria Luz Sanchez, and Pedro Guzman.

b. Make whole each of the employees named above in subparagraph 2a for loss of pay and other economic losses suffered by reason of their termination. The back-pay award shall include any wage increase, increase in work hours or bonus given by Respondent during the back-pay period, plus interest thereon, computed at the rate of seven percent (7%) per annum.

c. Preserve and make available to the Board or its agents, upon request, for examination and copying all payroll records, social security payment records, time cards, personnel records, and reports, and other records necessary to analyze the back pay due to the employees named in subparagraph 2a above.

d. Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

e. Post copies of the attached Notice on its premises for 90 consecutive days, the times and places of posting to be determined by the Regional Director.

f. Provide a copy of the Notice to each employee hired by Respondent during the six-month period following the issuance of this Decision.

g. Mail copies of the attached Notice in all appropriate languages, within 30 days from receipt of this Order, to all employees employed at any time between August 4, 1977 and the date of mailing the Notice.

h. Arrange for the attached Notice to be read in all appropriate languages on company time to all employees, by a company representative or by a Board Agent, and thereafter to accord said Board Agent the opportunity, outside the presence of Respondent's officers, agents and supervisors, to answer questions which employees may have regarding the Notice and their rights under the Agricultural Labor Relations Act.

i. Notify the Regional Director of the ALRB Salinas Regional Office, within thirty (30) days after receipt of a copy of this Decision and Order, what steps the Respondent has taken to comply therewith, and to continue reporting periodically thereafter, on request of the Regional Director, until full compliance is achieved.

Dated: December 27, 1978

GERALD A. BROWN, Chairman
ROBERT B. HUTCHINSON, Member
RONALD L. RUIZ, Member
HERBERT A. PERRY, Member
JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its case, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told us to send out and post this Notice.

We will do what the Board has ordered and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;
2. To form, join or help unions;
3. To bargain as a group and choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect one another; and
5. To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT photograph or attempt to cause the arrest of any UFW organizer for contacting or communicating with employees on our premises at reasonable times.

WE WILL NOT refuse to hire or rehire any employee, or otherwise discriminate against any employee in regard to his or her employment, to discourage union member-

ship, union activity or any other concerted activity by employees for their mutual aid or protection.

WE WILL NOT discharge or otherwise discriminate against any employee because he or she has filed charges or given testimony in matters before the ALRB.

WE WILL offer Yolanda Guzman, Josefina Lopez Guzman, Socorro Aguilar, Guadalupe Guzman, Rafael Guzman, Josefina Gomez Guzman, Jose Luis Gomez, Concepcion Gomez, Manuel Sanchez, Maria Luz Sanchez, and Pedro Guzman their old jobs back, and we will pay each of them any money each may have lost because we did not rehire them, plus interest thereon computed at seven percent per year.

Dated:

O. P. MURPHY PRODUCE CO., INC.,
dba O. P. MURPHY & SONS

By: _____
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

June 14, 1979

I have this day filed Order

HEARING DENIED

In re: 1 Civ. *No.* 46032

O. P. Murphy Produce Co.

vs.

Agricultural Labor Relations Board

Respectfully,
G. E. Bishel
Clerk

Court of Appeal of the State of California
in and for the
First Appellate District
Division Four

Filed APR 19, 1979

O.P. Murphy Produce Company, etc., Petitioner, vs. Agricultural Labor Relations Board, etc., Respondent, United Farm Workers of America, AFL-CIO, Real Party in Interest.	No. 46032

BY THE COURT:

The petition for writ of review is denied.

No sanction based on the Agricultural Labor Relations Board's finding was issued against petitioner. The Board's holding only requires compliance with the law on post-certification access, in accordance with 8 Cal. Admin. Code sec. 20900 (e)(1) (C) and *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal.3d 392, 414, 417.

Dated APR 19 1979

CALDECOTT, P.J.

APPENDIX B

UNITED STATES CONSTITUTION, AMENDMENT 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C

TEXT OF STATUTES INVOLVED

STATUTES

UNITED STATES CODE

29 U.S.C. 157

Employees shall have the right to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [29 U.S.C. 158(a)(3)].

29 U.S.C. 158(a)(1)

It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 (29 U.S.C. 151)

CALIFORNIA LABOR CODE

Section 1148. The board shall follow applicable precedents of the National Labor Relations Act, as amended.

Section 1152. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own

choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

Section 1153(a). It shall be an unfair labor practice for an agricultural employer to do any of the following:

(a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.

Section 1160.8. Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the Board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board's order. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree

enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

An order directing an election shall not be stayed pending review, but such order may be reviewed as provided in Section 1158.

If the time for review of the board order has lapsed, and the person has not voluntarily complied with the Board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refuses to comply with the order, the court shall enforce such order by writ of injunction or other proper process. The court shall not review the merits of the order.

CALIFORNIA ADMINISTRATIVE CODE

Section 20310—Employer Obligations

(a) Employer's written response to the petition. Upon service and filing of a petition, as set forth above, the employer so served shall provide to the regional director or his or her designated agent, within the time limits set forth in subsection (d), the following information accompanied by a declaration, signed under penalty of perjury, that the information provided is true and correct:

Section 20310(a)(2). A complete and accurate list of the complete and full names, current street addresses, and

job classifications of all agricultural employees, including employees hired through a labor contractor, in the bargaining unit sought by the petitioner in the payroll period immediately preceding the filing of the petition. The employee list shall also include the names, current street addresses, and job classifications of persons working for the employer as part of a family or other group for which the name of only one group member appears on the payroll. If the employer contends that the unit sought by the petition is inappropriate, the employer shall additionally and within the time limits set forth in subsection (d), provide a complete and accurate list of the names and addresses of the employees in the unit the employer contends to be appropriate, together with a written description of that unit. If an employer chooses to submit, in addition to the information required, W-4 forms, social security numbers, employee signature facsimilies, or similar information, the regional director shall use such information to confirm the validity of the union's showing of interest only to the extent he or she deems appropriate in his or her discretion. Such information may also be used by the regional director to the extent he or she deems appropriate in his or her discretion in order to resolve allegations of fraud in the showing of interest pursuant to Section 20300(j)(4) of these regulations.

Section 20310(a)(3). The names of employees employed each day during the payroll period immediately preceding the filing of the petition, the hours worked by each employee, or, if employment is on a piece-rate basis, the number of units credited to each employee. This information may be submitted in the form of a copy of the employer's

original payroll records or in some other form acceptable to the Board agent assigned to the case. The regional offices shall not disclose these records to any party.

Section 20310(a)(5). The names, addresses, and telephone numbers of all labor contractors supplying labor during the pertinent payroll period(s).

CALIFORNIA ADMINISTRATIVE CODE

Section 20900—Solicitation by Non-employee Organizers

Labor Code Section 1140.2 declares it to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing.

(a) Agricultural employees have the right under Labor Code Section 1152 to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from any or all of such activities except to the extent that such right may be affected by a lawful agreement requiring membership in a labor organization as a condition of continued employment. Labor Code Section 1153(a) makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce agricultural employees in the exercise of these rights.

(b) The United States Supreme Court has found that organizational rights are not viable in a vacuum. Their

effectiveness depends in some measure on the ability of employees to learn the advantages and disadvantages of organization from others. When alternative channels of effective communication are not available to a union, organizational rights must include a limited right to approach employees on the property of the employer. Under such circumstances, both statutory and constitutional principles require that a reasonable and just accommodation be made between the right of unions to access and the legitimate property and business interests of the employer.

(c) Generally, unions seeking to organize agricultural employees do not have available alternative channels of effective communication. Alternative channels of effective communication which have been found adequate in industrial settings do not exist or are insufficient in the context of agricultural labor.

(d) The legislatively declared purpose of bringing certainty and a sense of fair play to a presently unstable and potentially volatile condition in the agricultural fields of California can best be served by the adoption of rules on access which provide clarity and predictability to all parties. Relegation of the issues to case-by-case adjudication or the adoption of an overly general rule would cause further uncertainty and instability and create delay in the final determination of elections.

(e) Accordingly the Board will consider the rights of employees under Labor Code Section 1152 to include the right of access by union organizers to the premises of an agricultural employer for the purpose of meeting and talk-

ing with employees and soliciting their support, subject to the following regulations:

(1) When available.

(A) Access under this Section onto an agricultural employer's property shall be available to any one labor organization for no more than four (4) thirty-day periods in any calendar year.

(B) Each thirty-day period shall commence when the labor organization files in the appropriate regional office two (2) copies of a written notice of intention to take access onto the described property of an agricultural employer, together with proof of service of a copy of the written notice upon the employer in the manner set forth in Section 20300(f).

If a petition for election is filed, the right of access shall continue until after the election as provided by Section 20900(e)(1)(C). If a run-off or rerun election is directed, the right of access shall continue until after said election as provided in Section 20900(e)(1)(C).

(C) Access under this Section shall not be available to any labor organization after the 5th day following completion of the ballot count pursuant to Section 20360(a) in an election conducted under Chapter 5 of the Act, except that where objections to the election are filed pursuant to Labor Code Section 1156.3(c), the right of access shall continue for 10 days following service of and the filing of such objections. Access under this section recommences 30 days prior to the expiration of the bars to the direction of an election

set forth in Labor Code Sections 1156.5, 1156.6 and 1156.7(b). Nothing herein shall be interpreted or applied to restrict or diminish whatever rights of access may accrue to a labor organization certified as a bargaining representative.

(2) Voluntary agreements on access.

This regulation establishes the terms upon which a labor organization may take access. However, it does not preclude agreements by the parties to permit access on terms other than as set forth in this part, provided that any such agreement shall permit access on equal terms to any labor organization which agrees to abide by its terms. For the purpose of facilitating voluntary resolution by the parties of problems which may arise with access, the notice of intent to take access shall specify a person or persons who may reach agreements on behalf of the union with the employer concerning access to his/her property. The parties are encouraged to reach such agreements and may request the aid of the regional director and board agents in negotiating such agreements; however, no such attempts to reach an agreement, be they among the parties themselves or with the aid of this agency, shall be deemed grounds for delay in the taking of immediate access once a labor organization has filed its notice of intent to take access.

(3) Time and place of access.

(A) Organizers may enter the property of an employer for a total period of one hour before the start of work and one hour after the completion of work

to meet and talk with employees in areas in which employees congregate before and after working. Such areas shall include buses provided by an employer or by a labor contractor in which employees ride to and from work, while such buses are parked at sites at which employees are picked up or delivered to work. Where employees board such buses more than one hour before the start of work, organizers may have access to such buses from the time when employees begin to board until such time as the bus departs.

(B) In addition, organizers may enter the employer's property for a single period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall encompass such lunch break. If there is no established lunch break, the one-hour period shall encompass the time when employees are actually taking their lunch break, whenever that occurs during the day.

(4) Numbers of organizers; identification; prohibited conduct.

(A) Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.

(B) Upon request, organizers shall identify themselves by name and labor organization to the employer

or his agent. Organizers shall also wear a badge which clearly states his or her name, and the name of the organization which the organizer represents.

(C) The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery or interference with the process of boarding buses. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.

(5) Violations of Section 20900.

(A) Any organizer who violates the provisions of this part may be barred from exercising the right of access under this part in any one or more of the four geographical areas currently designated by the Board as regions, for an appropriate period of time to be determined by the Board after due notice and hearing.

Any labor organization or division thereof whose organizers repeatedly violate the provisions of this part may be barred from exercising the right of access under this part in any one or more of the four geographical areas currently designated by the Board as regions, for an appropriate period of time to be determined by the Board after due notice and hearing.

(B) Violation by a labor organizer or organization of the access regulation may constitute an unfair labor practice in violation of Labor Code Section 1154(a)(1) if it independently constitutes restraint and coercion

of employees in the exercise of their rights under Labor Code Section 1152. Violations by a labor organizer or organization of this part may constitute grounds for setting aside an election where the Board determines in objections proceedings under Section 1156.3(c) of the Act that such conduct affected the results of the election.

(C) Interference by an employer with a labor organization's right of access under this part may constitute grounds for setting aside an election where the Board determines in proceedings under Section 1156.3(c) of the Act that such conduct affected the results of the election. Furthermore, such interference may constitute an unfair labor practice in violation of Labor Code Section 1153(a) if it independently constitutes interference with, restraint, or coercion of employees in the exercise of their rights under Labor Code Section 1152.

Section 20910.—Pre-Petition Employee Lists

(c) *Within five days from the date of filing of the notice of intention to organize, the employer shall submit to the regional office an employee list as defined in Section 20310(a)(2). If the employer contends that the unit named in the notice is inappropriate, it shall submit its arguments to the regional director in writing. A contention that the unit named is inappropriate shall not excuse the timely submission of the pre-petition employee list in the unit named in the notice.

*Amended effective April 13, 1978.